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Security Council Committee established pursuant to resolution 2048 (2012) concerning Guinea-Bissau

Note verbale dated 1 February 2018 from the Permanent Mission of Poland to the United Nations addressed to the Chair of the Committee

The Permanent Mission of the Republic of Poland to the United Nations presents its compliments to the Chair of the Security Council Committee established pursuant to resolution 2048 (2012) concerning Guinea-Bissau and has the honour to report to the Committee on the steps that it has taken with a view to implementing paragraph 4 of resolution 2048 (2012) (see annex).

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Annex to the note verbale dated 1 February 2018 from the Permanent Mission of Poland to the United Nations addressed to the Chair of the Committee

Report of Poland on the implementation of Security Council resolution 2048 (2012)

In accordance with paragraph 10 of Security Council resolution 2048 (2012), all Member States are required to report to the sanctions committee on the steps that they have taken to implement the measures provided for in paragraph 4 of the resolution.

The system of sanctions imposed by the Security Council is implemented by the European Union in a uniform manner through the adoption of relevant legislation, such as decisions and regulations enacted on the basis of article 29 of the Treaty on European Union and article 215 of the Treaty on the Functioning of the European Union, respectively. It should be noted that, from a legal perspective, a regulation has a direct binding effect for all persons and entities, without any requirement that it be incorporated into national legislation.

Therefore, as a member of the European Union, Poland implements the provisions of the said resolution by applying, at the national level, relevant European Union legislation, giving effect to the obligation to take measures, as required under the relevant Security Council resolution.

Binding European Union legislation, such as Council Decision 2012/285/CFSP of 31 May 2012 concerning restrictive measures directed against certain persons, entities and bodies threatening the peace, security or stability of the Republic of Guinea-Bissau and repealing Decision 2012/237/CFSP, and Council Regulation (EU) No. 377/2012 of 3 May 2012 concerning restrictive measures directed against certain persons, entities and bodies threatening the peace, security or stability of the Republic of Guinea-Bissau, sets out the mechanisms of the travel ban and asset freezing applicable to listed individuals.

Travel ban

In accordance with article 1, paragraph 1 (a), of Council Decision 2012/285/CFSP, member States shall take the measures necessary to prevent the entry into, or transit through, their territories of persons listed in the annex to Security Council resolution 2048 (2012) and additional persons designated by the Security Council or by the Security Council Committee established pursuant to resolution 2048 (2012) concerning Guinea-Bissau, in accordance with paragraph 6 of resolution 2048 (2012), as listed in annex I.

Under article 1, paragraph 1 (b), of the Decision, the travel ban is also applicable to persons not covered by annex I engaging in or providing support for acts that threaten the peace, security or stability of the Republic of Guinea-Bissau and persons associated with them, as listed in annex II.

It should be noted that, in any case of modification or adoption of a new listing through an implementing decision or regulation, relevant data pertaining to listed entities, enumerated in the annexes to a specific act, are entered in the Schengen Information System by each country holding the presidency of the Council of the European Union. The second-generation Schengen Information System is a highly efficient large-scale information system that supports external border control and law enforcement cooperation in the Schengen States. Participating States provide entries in the system on wanted and missing persons, lost and stolen property, and entry bans. It is immediately and directly accessible to all authorized police officers and other

law enforcement officials and authorities that need the information to carry out their roles in protecting law and order and fighting crime.

Apart from uniform European Union legislation applicable for Schengen States, in accordance with national provisions as laid down in the Act of 12 December 2013 on Foreigners, there is a register of foreigners whose residence in the territory of Poland is undesirable, which is operational under the statutory competence of the Office for Foreigners.

According to article 435, paragraph 1, of the said legislation, the foreigner's data are entered and stored in the register if at least one of the enumerated circumstances exists, inter alia, if the entry or stay of the foreigner in the territory of the Republic of Poland is undesirable because of obligations arising from the provisions of ratified international agreements that are binding on the Republic of Poland and if it is justified by State defence or security or the protection of public safety and order or the interests of the Republic of Poland. This provision serves as a legal basis for entering in this database data on natural persons covered by a travel ban under the relevant Security Council resolution.

In this respect, the foreigner's data are to be stored in the register for the period required under international agreements that are binding on the Republic of Poland. In the case of entry when the stay of the foreigner may constitute a threat to State defence or security or the protection of public safety and order or interfere with the interests of the Republic of Poland, data are stored for a period not longer than five years, with the possibility of extension for subsequent periods, none of which exceeds five years.

Considering the sanctions regime against the Republic of Guinea-Bissau, enhanced scrutiny and monitoring are carried out by competent authorities supervising border control. Border guards, while fulfilling their duties, are entitled to carry out checks on persons and control the contents of baggage, along with meticulous control of travel documents and checking of their veracity.

Asset freezing

Asset freezing is addressed in the Republic of Poland in both national and European Union legislation. Council Regulation (EU) No. 377/2012 provides clearly in article 2 that all funds and economic resources belonging to, owned, held or controlled by natural or legal persons, entities and bodies who, in accordance with article 2(1) of Decision 2012/237/CFSP, have been identified by the Council as either engaging in or providing support for acts that threaten the peace, security or stability of the Republic of Guinea-Bissau or being associated with such persons, entities or bodies, as listed in annex I, shall be frozen. It is worth noting that all addressees of the European Union provisions are required by law to apply the asset-freezing measure without either prior confirmation or a decision made by the relevant authority.

It should be emphasized that, as far as asset freezing is concerned, the said regulation has been complemented by relevant national legislation. Chapter 5a of the Act of 16 November 2000 on Counteracting Money-Laundering and Terrorism Financing (Journal of Laws, 2016, item 299) supplements European regulations with procedures relating to the application of restrictive measures, the release of frozen assets and penalties applicable for non-compliance.

Under the said statute, it is mandatory for all covered institutions to freeze the asset values on the basis of the European Union legislation imposing specific restrictive measures directed against certain persons, groups or entities. Moreover, there is a specific requirement for covered entities to introduce a written internal

procedure covering, in particular, customer due diligence, reporting, account blocking and asset freezing. The measures set forth in Council Regulation (EU) No. 377/2012 should be considered along with a risk-based approach applicable by financial market entities at each stage and in line with international standards. Enhanced customer due diligence measures are regarded as a mandatory tool applied by the financial market entities in Poland when dealing with natural persons or legal entities established in third countries subject to an international sanctions regime. As a standard procedure, customer screening is carried out regularly, whenever there is a relevant amendment of the European Union legislation in force. Any institution, while performing such freezing, submits all the data in its possession and related to the freezing of asset values to the financial intelligence unit. In line with the legal requirements, as provided above, reporting institutions are obliged to establish due diligence procedures. The identification and verification of the identity of a natural or legal person and of the beneficial owner on the basis of the identity documents, as well as data or information obtained from a reliable and independent source, are required under the Act on Countering Money-Laundering and Terrorism Financing. It should be noted that reporting institutions are subject to the requirements of the Act and are therefore subject to supervision. Pursuant to article 21, the financial intelligence unit is responsible for monitoring compliance by financial institutions with the requirements under the statute and related requirements on asset freezing.

Taking into consideration the broad legislative framework, as well as enhanced scrutiny by national authorities, we firmly believe that Poland acts fully in line with international obligations.